IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES	**CRIMINAL ACTION**
v.	
LEONARDO ROMAN, also known as "VIEJO"	**NO. 13-141-05**

DuBois, J. **January 14, 2015**

M E M O R A N D U M

I. INTRODUCTION

Defendant Leonardo Roman ("Roman") is charged by Superseding Indictment with conspiracy to distribute one kilogram or more of heroin, in violation of 21 U.S.C. § 846. Presently before the Court is Roman's Motion to Dismiss on the Basis of Double Jeopardy ("Motion to Dismiss"), in which he argues that his successive state and federal prosecutions for conspiracy violate the Double Jeopardy Clause. For the reasons stated below, the Court denies Roman's Motion to Dismiss.

II. BACKGROUND

On April 20, 2012, Roman was charged in the Philadelphia Court of Common Pleas with three crimes: conspiracy, knowing and intentional possession of heroin and cocaine, and knowing and intentional possession of heroin and cocaine with the intent to distribute both substances. The Criminal Complaint alleges that Roman possessed cocaine and heroin in sufficient quantity and/or under sufficient circumstances to suggest an intent to deliver those substances, and conspired to do so, on the 2900 block of Rorer Street. On February 8, 2013, Roman plead guilty to the knowing and intentional possession of narcotics with the intent to distribute, in violation of 35 Pa. Cons. Stat. § 780-113(a)(30), and conspiracy, in violation of 18

Pa. Cons. Stat. § 903(c). He was sentenced to a period of incarceration of nine to twenty-three months.

A grand jury in the Eastern District of Pennsylvania returned an Indictment on March 27, 2013 against three other defendants in the matter now pending before the Court. At that time, Roman was incarcerated on the aforementioned state convictions and was not named in the Indictment.

On August 27, 2014, a grand jury in the Eastern District of Pennsylvania returned a five-count Superseding Indictment charging Roman in Count One with conspiracy to distribute one kilogram or more of heroin, in violation of 21 U.S.C. § 846. (Super. Indict. ¶¶ 1, 3.) Five other defendants were also charged in the conspiracy and with other related drug offenses.

The Superseding Indictment alleges the following facts: Roman engaged in a conspiracy to distribute heroin from in or about April 2012 to in or about March 2013. (Id. ¶ 1.) Roman was a member of the Salamo Drug Trafficking Organization ("Salamo DTO"), which sold cocaine and heroin in the area of the 2900 block of Rorer Street. (Id. ¶ 6.) On or about December 22, 2012, Roman provided a Salamo DTO worker, whose identity is unknown to the grand jury, with heroin to sell to customers on the 2900 block of Rorer Street. (Id., Overt Acts, ¶ 42.) Shortly thereafter, a customer unsuccessfully attempted to rob the Salamo DTO worker at gun point. (Id.)

The Superseding Indictment avers generally that from in or about April 2012 to in or about early July 2012, defendants Salamo and Guzman provided packaged heroin to Roman and Segarra to sell on the 2900 block of Rorer Street, id., Overt Acts, ¶4; and that from in or about mid-December 2012 to March 2013, Roman, in addition to defendants Segarra and Rivera, sold heroin to customers on the 2900 block of Rorer Street, either making sales directly themselves or

recruiting other individuals to work for the Salamo DTO to make the sales on their behalf., id., Overt Acts, ¶ 35. However, the only specific overt act attributed to Roman in the Superseding Indictment is the December 22, 2012 incident, in which Roman is charged with providing heroin to an unknown Salamo DTO worker.

III. DISCUSSION

In his Motion to Dismiss, Roman argues that his federal prosecution violates the Double Jeopardy Clause because the agreement forming the basis of the conspiracy with which he is charged in the Superseding Indictment is the same agreement underlying the conspiracy with which he was charged and to which he plead guilty in Pennsylvania state court in 2013. He contends that the agreement at issue in both prosecutions involved the sale of drugs during an overlapping time period on the 2900 block of Rorer Street, over which the Salamo DTO had exclusive control for the purposes of drug trade.

In response, the government argues that: 1) the dual sovereignty doctrine permits successive state and federal prosecutions for the same offense; and 2) the conspiracy charged in the Superseding Indictment is not the same as that charged in the state court by the Commonwealth. With respect to the latter argument, the government contends that in the state court case, Roman was charged with a single day of conduct, and in the federal prosecution, he is charged with an 11-month conspiracy, with Roman participating in two distinct periods of heroin distribution activity on the 2900 block of Rorer Street. The Court agrees that the dual

sovereignty doctrine applies, and thus, Roman's federal prosecution does not violate the Double Jeopardy Clause.[1]

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall 'be subject for the same offence to be twice put in jeopardy of life or limb.'" U.S. Const. amend. V. However, the reach of this protection is limited by several important exceptions, including the doctrine of dual sovereignty. United States v. Piekarsky, 687 F.3d 134, 149 (3d Cir. 2012). Under the dual sovereignty doctrine, "a state prosecution does not bar a subsequent federal prosecution for the same conduct." Id. "The 'dual sovereignty' doctrine rests on the premise that, where both sovereigns legitimately claim a strong interest in penalizing the same behavior, they have concurrent jurisdiction to vindicate those interests and neither need yield to the other." United States v. Pungitore, 910 F.2d 1084, 1105 (3d Cir. 1990); United States v. Lanza, 260 U.S. 377, 382 (1922) ("[A]n act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each.").

The U.S. Court of Appeals for the Third Circuit has repeatedly expressed dissatisfaction "with the Supreme Court's application of the dual sovereignty principle to hold that prosecution of the same crime in both the federal and state systems does not violate the Double Jeopardy Clause." United States v. Wilson, 413 F.3d 382, 389 (3d Cir. 2005) (citing United States v. Grimes, 641 F.2d 96, 100-04 (3d Cir. 1981)). Notwithstanding that dissatisfaction, the Third Circuit has acknowledged that it must follow current precedent, which holds that there is no double jeopardy bar to prosecuting a defendant in federal court for the same conduct for which

[1] The Court need not address the government's second argument because it concludes that, even if the conspiracies charged in state and federal court were in fact the same, the dual sovereignty doctrine permits the successive federal prosecution of Roman without violating the Fifth Amendment's prohibition against double jeopardy.

he was prosecuted in state court. Id.; see also Grimes, 641 F.2d at 104 (despite concerns with such successive prosecutions, "we do not believe that we are the proper forum to overturn a legal directive from the Supreme Court"). This Court is similarly constrained by existing Supreme Court precedent, and thus concludes that the Double Jeopardy Clause does not bar the successive federal prosecution of Roman for conduct for which he was already allegedly prosecuted in state court.

Roman relies on a recent non-precedential[2] Third Circuit decision, United States v. Roland, 545 F. App'x 108, 114 (3d Cir. 2013), in arguing that even under the dual sovereignty doctrine, the Court must assess whether the offenses charged in the state and federal proceedings are the same under the totality of the circumstances test set out in United States v. Liotard, 817 F.2d 1074 (1987). However, the Court agrees with the government that a closer read of the Roland decision makes it clear that the Third Circuit has not limited the application of the dual sovereignty in such a way as Roman suggests and does not necessitate an additional totality of the circumstances inquiry into the sameness of the offenses charged. The Supreme Court "has plainly and repeatedly stated that two identical offenses are not the 'same offence' within the meaning of the Double Jeopardy Clause if they are prosecuted by different sovereigns." Heath v. Alabama, 474 U.S. 82, 92 (1985).

Moreover, in Roland, defendant argued not that dual federal and state prosecutions for the same conduct are prohibited under the dual sovereignty doctrine, but rather that the case fell within the narrow exception to the dual sovereignty doctrine articulated in Bartkus v. People of

[2] The U.S. Court of Appeals for the Third Circuit does not prohibit citation to non-precedential opinions, In re Grand Jury Investigation, 445 F.3d 266, 276 (3d Cir. 2006), but does "not accept these opinions as binding precedent because, unlike precedential opinions, they do not circulate to the entire court before they are filed. Accordingly, not every judge on the court has had an opportunity to express his/her views about the opinion before it is filed." Jamison v. Klem, 544 F.3d 266, 278 n.11 (3d Cir. 2008).

State of Ill., 359 U.S. 121 (1959). In Bartkus, the Supreme Court alluded to a possible exception to the dual sovereignty doctrine if "one authority was acting as a surrogate for the other, or if the state prosecution was merely 'a sham and a cover for a federal prosecution. . . .'" Roland, 545 F. App'x at 115 (quoting Bartkus, 359 U.S. at 123-24). Roman does not contend that this case falls within this limited exception, nor does the Court believe that the exception is applicable to this case. The Roland decision adopts what courts have long held — successive state and federal prosecutions for the same conduct are permitted under the dual sovereignty doctrine without violating the Double Jeopardy Clause.

As this case falls within the parameters of the dual sovereignty doctrine, the Court concludes that Roman's prosecution for conspiracy does not violate the Double Jeopardy Clause of the Fifth Amendment.[3]

IV. CONCLUSION

For the aforementioned reasons, the Court denies Roman's Motion to Dismiss on the Basis of Double Jeopardy.

An appropriate order follows.

[3] Roman is not entitled to a pre-trial evidentiary hearing on the merits of the Motion to Dismiss because he has not made a non-frivolous showing of double jeopardy. See United States v. Liotard, 817 F.2d 1074, 1077 (3d Cir. 1987) (defendant is entitled to a pre-trial evidentiary hearing to determine the merits of his claim only if he makes a non-frivolous showing of double jeopardy).

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O R D E R

AND NOW, this 14th day of January, 2015, upon consideration of Defendant Leonardo Roman's Motion to Dismiss on the Basis of Double Jeopardy (Document No. 154, filed October 3, 2014); Government's Response in Opposition to Defendant's Motion to Dismiss the Superseding Indictment (Document No. 177, filed December 23, 2014); Reply Brief in Support of Defendant Leonardo Roman's Motion to Dismiss on the Basis of Double Jeopardy (Document No. 183, filed January 5, 2015); and Government's Sur-Reply in Opposition to Defendant's Motion to Dismiss the Superseding Indictment (Document No. 184, filed January 7, 2015), for the reasons stated in the accompanying Memorandum dated January 14, 2015, **IT IS ORDERED** that Defendant Leonardo Roman's Motion to Dismiss on the Basis of Double Jeopardy is **DENIED**.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.